

AG Contract No. KR97-0423-TRN
ADOT ECS File No JPA 97-200
Project: SR-101L, Agua Fria Fwy.
Section: Camelback Road-Northern Avenue
TRACS No.: H 4578 01C
IGA FCD 98006

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

C 69.98.100.2

THIS AGREEMENT is entered into 23 June, 1998, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "STATE") and FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, acting by and through its BOARD OF DIRECTORS (the "DISTRICT").

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the STATE

2. The DISTRICT is empowered by Arizona Revised Statutes Section 48-3603 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the DISTRICT.

3. As part of the construction of the Agua Fria Freeway, from Camelback Road to Northern Avenue, the STATE is designing and constructing the Bethany Home Outfall Channel (BHOC). The DISTRICT desires to convey 2200 cubic feet per second (cfs) through the BHOC entering from the east at the Bethany Home Road alignment and conveying said flow to the New River, herein referred to as "the Project". The BHOC will be designed and constructed in such a manner as to be consistent with the level of protection provided by the DISTRICT's New River levee project. The DISTRICT will fund the additional costs incurred by the STATE for right of way, design, construction, construction engineering and additional structures associated with enlarging the BHOC, to convey the DISTRICT's 2200 cfs.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 22427
Filed with the Secretary of State
Date Filed: 6/23/98
Betty Gayless
Secretary of State
By: Borden Inman

II. SCOPE OF WORK**1. The DISTRICT will:**

a. Upon execution of this agreement and receipt of an invoice from the STATE, coordinate with the State the establishment of an interest bearing account with the Local Government Investment Pool, (the Bethany Home Outfall Channel Account (the "BHOCA Account")), at the State Treasurer's Office, in an amount of \$1,750,000.00, which is the estimated cost of the DISTRICT's portion of the costs associated with the Project, as shown on Exhibit "A-1", attached hereto and made a part hereof. The DISTRICT will authorize the State Treasurer to accept requests to disperse funds to a designated representative, of the Arizona Department of Transportation, Administrative Division, on an as needed basis.

b. Upon receipt of design plans from the STATE, review and comment within thirty (30) days.

c. Upon receipt of construction bid, notify the STATE with any comments regarding the bid and any bid items which appear to be unbalanced for subsequent approval of cost sharing.

d. Be responsible for 31% of the actual costs for items shown on Exhibit "A-1", Project costs will be adjusted to actual contract amounts after receipt of bids and award of a construction contract.

e. Acquire by negotiation, in the name of the STATE, all right of way associated with the Project, in accordance with Arizona Department of Transportation's (ADOT's) specifications. If property must be condemned, the entire package for that parcel will be forwarded to the STATE and then to the Attorney General's office for condemnation.

f. Follow Task Order requirements as shown on Exhibit "B", attached hereto and made a part hereof.

g. Transfer sufficient land rights, to the STATE, for use of DISTRICT owned rights of way and utility easements required to construct, operate and maintain the Project, at no cost to the STATE.

h. Be responsible for additional design and construction costs for the channel and/or structures, should the DISTRICT request any additional modifications and features.

i. Upon completion of the Project, and receipt of an invoice and recapitulation, deposit additional funds, if necessary, for the difference in the DISTRICT's initial deposit and the actual costs associated with the Project.

j. Be responsible for contractor claims for delays or extra compensation for any reason attributable to the DISTRICT.

2. The STATE will:

a. Upon execution of this agreement, invoice the DISTRICT \$1,750,000.00, (thirty-one percent (31%)) which is the estimated cost of the DISTRICT's portion of the costs associated with the Project as shown on Exhibit "A-1". Assist the DISTRICT in establishing an interest bearing account with the Local Government Investment Pool at the State Treasurer's Office.

b. Be responsible for design plans, specifications, construction administration and other documents that are required for the construction of the Project.

c. Provide to the DISTRICT design data, preliminary plans and specifications for the Project prior to finalization, for review and comment. Incorporate or resolve DISTRICT's review comments as appropriate. Provide the DISTRICT courtesy review plans of future connections to the BHOC.

d. Cause its consultants to document field changes that occur during construction and provide a complete set of "as-built" drawings to the DISTRICT for the Project upon completion of construction.

e. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). State will not let the contract until the DISTRICT has completed all right of way transactions or transferred all right of way in accordance with Exhibit "B". Upon receipt of construction bid, notify the DISTRICT of the actual cost for the completion of the Project.

f. Be responsible for contractor claims for delays or extra compensation for any reason attributable to the STATE.

g. Document changes in the bid item quantities associated with the Project during final design and construction which will affect amounts identified in II.1.a., and request approval from the DISTRICT if costs increase.

h. Follow Task Order requirements as shown on Exhibit "C", attached hereto and made a part hereof. If property must be condemned the entire package for that parcel will be forwarded to the STATE and then to the Attorney General's office for condemnation.

i. Upon completion of the Project, provide the DISTRICT a recapitulation of the actual costs associated with the Project. Invoice or release to the DISTRICT the difference in the DISTRICT's initial deposit and 31% of actual costs associated with the Project, plus any accrued interest.

j. Upon completion of the Project, be responsible for operations and maintenance of the BHOC, at no cost to the DISTRICT.

k. Provide the DISTRICT access for ingress and egress along the maintenance road of the BHOC, and construct adequate turn around space on both sides of the intersection of the DISTRICT's Camelback Ranch levee and the BHOC.

III. MISCELLANEOUS PROVISIONS

1. All parties to this agreement shall take reasonable and necessary actions within its licensing authority to assure that any water discharged into the Project through their storm drain facilities complies at the point of discharge with any applicable requirements of the Clean Water Act, National Pollutant Discharge Elimination System (NPDES), or any other discharge requirements, including any permit requirements.

2. Each party to this agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with these projects, with the exception of construction management, if provided with in-house staff.

3. If legislation is enacted after the effective date of this agreement which changes the relationship or structure of either of the parties to this agreement, the parties agree that this agreement shall be renegotiated at the written request of either party.

4. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

5. This agreement shall become effective upon filing with the Secretary of State

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Flood Control District of Maricopa County
Chief Engineer and General Manager
2801 W. Durango Street
Phoenix, AZ 85009

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

Recommended:

By: MS 9/11
MICHAEL S. ELLEGOOD, P.E.
Chief Engineer & General Manager

5/13/98
(DATE)

Approved and Accepted:

By: Jan Brewer
Chairman, Board of Directors

Attest:

By: Jan McCausy
Clerk of the Board

6-3-98
(DATE)

The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

By: Julie M. Lemmon
District, General Counsel

5/13/98
(DATE)

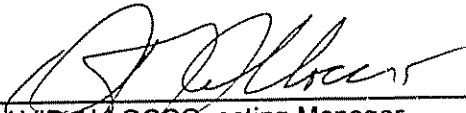
STATE OF ARIZONA
Department of Transportation

By: Victor M. Menendez
VICTOR M. MENDEZ
Deputy State Engineer

RESOLUTION

BE IT RESOLVED on this 8th day of October 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Flood Control District of Maricopa County, for the purpose of defining responsibilities for the costs associated with widening the Bethany Home Outfall Channel, (i.e. right of way purchases, design, construction, operation and maintenance).

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



DAVID ALLOCCO, acting Manager
Engineering Technical Group

for LARRY S. BONINE, Director

EXHIBIT "A-1"

Bethany Home Outfall Channel Estimated Project Cost

Combined ADOT & FCDMC Discharge Total Channel Costs

	<u>Cost (\$)</u>	<u>Total Cost (\$)</u>
Construction		
Construction (See Exhibit A-2)	3,002,972	
Bethany Home Structure	130,150	
Misc. 11% (Mob, survey, QC, dust)	344,643	
Contingency (10%)	347,777	
Cst. Admin. (14%)	535,576	
Construction Subtotal		4,361,118
Design Costs		
9.5% of Construction Costs		414,306
Right-of-way		<u>959,289</u>
Total Cost		5,734,713

ADOT Discharge Total Channel Costs

	<u>Cost (\$)</u>	<u>Total Cost (\$)</u>
Construction		
Construction (See Exhibit A-2)	2,070,812	
Misc. 11% (Mob, survey, QC, dust)	227,789	
Contingency (10%)	229,860	
Cst. Admin. (14%)	353,985	
Construction Subtotal		2,882,445
Design Costs		
9.5% of Construction Costs		273,832
Right-of-way		<u>826,036</u>
Total Cost		3,982,314

Cost Differential (Combined vs. ADOT) \$ 1,750,000
Increase in Cost (Combined vs. ADOT) 31%

Construction Cost Comparison (Combined Discharge vs. ADOT Discharge)

[illegible]

Item No.	Item Description	Unit	Qty	Unit Cost	Cost (\$)	Total Cost (\$)
2030451	Channel Excavation	CU YD	84,377	2.30	194,067	194,067
3030022	Aggregate Base, Class 2	CU YD	2,254	16.00	36,063	36,063
5011024	Pipe, Reinforced Concrete, Class IV, 24"	L FT	30	45.00	1,350	1,350
5011044	Pipe, Reinforced Concrete, Class IV, 36"	L FT	30	70.00	2,100	2,100
9140155	Retaining Wall	SQ FT	8,164	22.00	179,608	179,608
9201006	Concrete Channel Lining (6")	SQ YD	45,432	25.00	1,135,808	1,135,808
Reinforced Concrete Box Culvert (4-10'x8'x50')						
2030501	Structural Excavation	CU YD	2,923	7.00	20,461	
2030506	Structural Backfill	CU YD	610	15.00	9,150	
6010002	Structural Concrete (Class S) (F _c =3000psi)	CU YD	230	180.00	41,310	
6050002	Reinforcing Steel	LB	32,260	0.35	11,291	
Box Culvert Subtotal						82,212
Reinforced Concrete Box Culvert (3-8'x6'x180')						
2030501	Structural Excavation	CU YD	3,642	7.00	25,494	
2030506	Structural Backfill	CU YD	840	15.00	12,600	
6010002	Structural Concrete (Class S) (F _c =3000psi)	CU YD	935	180.00	168,364	
6050002	Reinforcing Steel	LB	100,227	0.35	35,079	
Box Culvert Subtotal						241,538
Reinforced Concrete Box Culvert (3-10'x6'x30')						
2030506	Structural Backfill	CU YD	198	15.00	2,970	
6010002	Structural Concrete (Class S) (F _c =3000psi)	CU YD	196	180.00	24,516	
6050002	Reinforcing Steel	LB	15,716	0.35	5,501	
Box Culvert Subtotal						32,987
Reinforced Concrete Box Culvert (5-10'x8'x102')						
2030501	Structural Excavation	CU YD	2,950	7.00	20,650	
2030506	Structural Backfill	CU YD	801	15.00	12,015	
6010002	Structural Concrete (Class S) (F _c =3000psi)	CU YD	575	180.00	103,569	
6050002	Reinforcing Steel	LB	82,416	0.35	28,846	
Box Culvert Subtotal						165,079
					Total:	2,070,812

EXHIBIT "B"

TASK ORDER

The DISTRICT will:

1. Obtain and be responsible for Title Reports for all parcels to be acquired.
2. Obtain and be responsible for Appraisal Reports and have them reviewed according to ADOT specifications.
3. Perform any relocations according to ADOT specifications and Federal Regulations
4. Open escrow with a title company of the DISTRICT's choice, order updated titled reports if necessary and obtain title insurance on privately owned parcels in the name of the State of Arizona by and through its Department of Transportation. Monitor the escrow process and assist in clearing title requirements if necessary.
5. Prepare and maintain Parcel files for each acquisition and relocation in ADOT's format utilizing ADOT's forms
6. Provide notices to property owners and occupants in accordance with Federal Regulations and ADOT policy.
7. Return all documents and completed files to ADOT.
8. Process payments in a timely manner.
9. Use its best efforts to stay within the projected schedule

EXHIBIT "C"

TASK ORDER

The STATE will:

1. Monitor right of way project
2. Provide the DISTRICT, necessary right of way plans.
3. Approve all payments and provide funding for the acquisitions costs (title, fees, related expenses, purchase price etc.) directly to escrow.
4. Review and approve any administrative increases prior to final offers.
5. If necessary, approve and handle all condemnation actions through the Attorney General's Office.
6. Provide to the DISTRICT, IBM compatible disk for letters and forms.
7. Perform or have consultants perform asbestos and hazardous materials studies as appropriate.
8. Demolish or have consultants demolish and remove any structures in the area of the Project.
9. Provide delineation, prepare legal descriptions and documents of conveyance (deeds).



GRANT WOODS
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
1275 WEST WASHINGTON, PHOENIX 85007-2926

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TELECOPIER : 542-4085

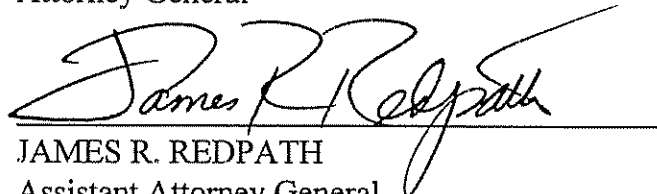
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR98-0423TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE June 23, 1998.

GRANT WOODS
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/13200

Enc.